IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6834 of 2007()

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CC.759/2004 of J.M.F.C.-I, KOLLAM

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: PETITIONER/ACCUSED 4

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KAMALUDDIN, S/O. SULAIMAN,
KETTIDATHIL VEEDU, CHANATHOPPU, KOTTANKARA CHERRI,
KOTTANKARA VILLAGE, KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS: STATE

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STATE OF KERALA, THROUGH THE
S.I. OF POLICE, KUNDARA P.S., REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007 ALONG WITH B.A.NOS.6836 & 6843 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.Nos.6834, 6836 & 6843 of 2007**

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**Dated this the 5th day of November, 2007**

**ORDER**

The common petitioner in these 3 applications faces indictment in 3 separate prosecutions, all pending before the Judicial Magistrate of the First Class-I, Kollam. Two of them are Sessions offences and in the third, offences triable by the Magistrate is alleged. It is unnecessary to advert to the details of the allegations against the petitioner considering the nature of the relief that he claims in these applications.

2. Investigation in all the 3 crimes is over. Final reports have already been filed. Cognizance has been taken by the learned Magistrate. C.C.No.759 of 2004 has been registered in respect of the offences triable by the Magistrate. C.P.Nos.138 and 139 of 2007 have been registered in respect of the offences triable exclusively by a Court of Session. Consequent to non appearance of the petitioner, the learned Magistrate has issued coercive processes against the petitioner.

3. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He was employed abroad

and he was hence unable to appear before the learned Magistrate. The petitioner is now willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He hence prays that directions under Section 438 and/or 482 Cr.P.C may be issued in his favour.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific

direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

**(R.BASANT, JUDGE)**

rtr/-